



**Legal Opinion L-2001-14.1**  
**October 12, 2001**

U.S. Railroad Retirement Board      Phone: (312) 751-7139  
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**TO** : Ronald Russo  
Director of Policy and Systems

**FROM** : Steven A. Bartholow  
General Counsel

**SUBJECT** : Burlington Northern Santa Fe Sick Leave Policy

This is to clarify Legal Opinion L-2001-14, which held that the payments made pursuant to the Burlington Northern Santa Fe sick leave policy are made pursuant to a plan and accordingly do not constitute compensation under section 1(h)(6)(v) of the Railroad Retirement Act.

Although payments under this plan are not compensation under section 1(h)(6)(v), they may be tier I compensation under section 1(h)(8). Section 1(h)(8) of the Railroad Retirement Act provides that:

Notwithstanding any other provision of this Act, for the purposes of sections 3(a)(1), 4(a)(1), and 4(f)(1), the term "compensation" includes any payment from any source to an employee or employee representative if such payment is subject to tax under section 3201 or 3211 of the Internal Revenue Code of 1954.

Accordingly, payments made under the BNSF plan, to the extent that they may be subject to the tier I tax under section 3201 of the Railroad Retirement Tax Act (see also section 3231(e)(1)(i)), would be considered compensation for tier I purposes only, by reason of section 1(h)(8).